

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHAUKAT "SAL" MAREDIA,  
  
Plaintiff,  
  
v.  
  
PHILLIP MORRIS USA, and DOES 1  
through 10, inclusive,  
  
Defendants.

1:05-CV-00393 OWW SMS

ORDER RE: PHILIP MORRIS USA  
INC.'S REQUEST FOR  
TERMINATING SANCTIONS.

I. INTRODUCTION

This lawsuit arises out of a contract dispute between Shaukat "Sal" Meredia ("Maredia" or "Plaintiff") and Philip Morris USA ("PM"). Plaintiff asserts that PM owes him money for promotional sales of cigarettes. PM contends that it overpaid Maredia and has filed a counterclaim to recover the overpayments.

Before the court for decision is PM's motion for terminating sanctions based upon Maredia's continuing failure to comply with his discovery obligations. (Doc. 66, filed May 31, 2006.) PM asserts that (1) Maredia has failed to respond to its discovery requests; (2) since Maredia's counsel withdrew as a result of Maredia's failure to cooperate with him during the discovery process, Maredia has failed to communicate with PM directly regarding discovery; and (3) Maredia has failed to appear for a

1 hearing on PM's motion to compel and has failed to comply with an  
2 order compelling discovery. Specifically, PM requests that  
3 Maredia's complaint be dismissed, that his answer to PM's  
4 counterclaims be stricken, and that default be entered against  
5 Maredia on PM's counterclaims. (*Id.* at 10.)

## 6 7 **II. PROCEDURAL HISTORY**

### 8 **A. The Underlying Lawsuit.**

9 Maredia and PM entered into a series of contracts in 2001  
10 and 2002, pursuant to which Maredia could earn promotional  
11 payments based upon the sale of cigarettes at Maredia's retail  
12 stores. (Chanco Decl. at ¶4(a).) The agreements explicitly  
13 provide that Maredia is only entitled to promotional payments for  
14 sales to adult consumers in face-to-face transactions, and that  
15 Maredia was not entitled to payments for products sold to other  
16 retailers, wholesalers, or trade accounts. (Chanco Decl. at  
17 ¶4(b).) Maredia's promotional payments were based on the volume  
18 of product sold pursuant to the agreement. PM relied upon  
19 Maredia to report his sales volume. (*Id.* at ¶¶4(a), 5.) PM  
20 asserts that in 2002 it learned that Maredia was seeking  
21 promotional payments for products sold to other retail,  
22 wholesale, and trade accounts. Based upon this knowledge, PM  
23 refused to make certain promotional payments to Maredia.

24 Maredia filed the instant lawsuit in February 2005, seeking  
25 to obtain the promotional payments PM refused to make. (Doc. 1,  
26 Notice of Removal, Ex. A.) PM removed on the basis of diversity  
27 (Doc. 1), and later filed a counterclaim based upon its belief  
28 that Meridia received significant overpayments from PM (Doc. 35).

**B. The Alleged Discovery Violations.**

PM served Maredia with its First Set of Interrogatories and Requests for production on December 5, 2005. Answers were due on January 9, 2006. (Chanco Decl., ¶7, Exs. C & D.) Maredia, through his former counsel, Mr. Charles Doerksen, asked for and received two extensions to respond to the discovery requests. (*Id.* at ¶8.) A few days prior to the final due date, Doerksen informed PM that Maredia's discovery responses would not contain any substantive information because Maredia refused to cooperate with him in preparing answers. (*Id.*) Doerksen, on Maredia's behalf, served answers and responses on January 20, 2006, which were devoid of any substantive information. (*Id.* at ¶9, Ex. E & F.)

Counsel for both parties participated in a teleconference with Magistrate Judge Sandra M. Snyder on February 14, 2006, at which time Doerksen conceded that the discovery responses were deficient and that Maredia refused to cooperate with him. (Chanco Decl. at ¶11, Ex. H.) A hearing date of March 24, 2006, was set to hear PM's motion to compel further discovery and for sanctions. (*Id.* at ¶12.)

Doerksen, meanwhile, had moved to withdraw as counsel. (Doc. 51, filed Feb. 2, 2006.) While that motion was still pending, Doerksen agreed to convey a "meet and confer" letter prepared by PM to Maredia. (Chanco Decl. at ¶14.) The letter was emailed to Maredia by Doerksen on February 22, 2006. (Chanco Decl. at ¶14, Ex. L.) The letter advised Maredia of his obligations under Local Rule 37-251 to confer with counsel for PM

1 and asked Maredia to contact PM's counsel by March 14, 2006 to  
2 confer about discovery. (Chanco Decl. at ¶15, Ex. J.)

3 PM filed its notice of motion and motion to compel further  
4 discovery responses on February 22, 2006. (Doc. 54.) At the  
5 request of PM's counsel, Doerksen emailed a copy of the notice to  
6 Maredia on February 23, 2006. (Chanco Decl. at ¶16, Ex. M.)

7 On March 2, 2006, Doerksen's motion to withdraw was  
8 granted. (Doc. 57.) The order granting that motion advised  
9 Maredia to obtain counsel, informed him that he was expected to  
10 comply with the requirements and deadlines set forth in the  
11 original scheduling order, and warned maredia that failure to  
12 comply with an order of the court might result in a  
13 recommendation that the matter be dismissed. (Doc. 57 at 3-4.)

14 Maredia failed to communicate with PM by the March 14, 2006  
15 deadline set forth in PM's "meet and confer" letter. (Chanco  
16 Decl. at ¶18.) PM filed a declaration with the court regarding  
17 this failure on March 17, 2006. (*Id.* at ¶19; Doc. 58.)

18 On March 24, 2006, counsel for PM appeared before Magistrate  
19 Judge Snyder on the motion to compel. (Chanco Decl. at ¶20.)  
20 Maredia failed to appear. (Doc. 59.) The Magistrate Judge  
21 granted PM's motion to compel and awarded \$2,250 in monetary  
22 sanctions against Maredia, finding:

- 23 (1) MAREDIA failed to provide adequate responses to PM  
24 USA's interrogatories and made improper  
boilerplate and baseless objections;
- 25 (2) MAREDIA failed to produce any documents in  
26 response to PM USA's requests for production and  
27 once again made improper boilerplate and baseless  
objections; and

(3) MAREDIA breached his discovery obligations under Local Rule 37-251 by ignoring attempts by counsel for PM USA to informally confer and attempt to resolve this discovery dispute, thereby prejudicing PM USA's right to obtain information relating to MAREDIA's claims and its preparations for trial.

(Doc. 62.) The Order gave Maredia until April 14, 2006 "to serve full and complete answers and responses to all of PM['s] interrogatories and requests for production without objection, and to produce all documents in MAREDIA's possession that are responsive to all of PM['s] requests for production." (*Id.*)

\_\_\_\_Maredia failed to serve any discovery upon PM by April 14, 2006, nor has he paid the monetary sanctions or otherwise communicated with counsel for PM. (*Id.*) PM filed the instant request for terminating sanctions at the direction of the Magistrate Judge. (See Doc. 64.) Maredia has filed no responsive documents.

### **III. DISCUSSION**

#### **A. Legal Standard.**

Federal Rule of Civil Procedure 37(b)(2) provides that if a party "fails to obey an order to provide or permit discovery" a court "may make such orders in regard to the failure as are just," including issuing:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

Fed. R. Civ. Pro. 37(b)(2). "Where it is determined that counsel or a party has acted willfully or in bad faith in failing to comply with the rules of discovery or with court orders enforcing the rules or in flagrant disregard of those rules or orders, it is within the discretion of the trial court to dismiss the action or to render judgment by default against the party responsible for noncompliance." *G-K Properties v. Redevelopment Agency of the City of San Jose*, 577 F.2d 645, 647 (9th Cir. 1978).

"Disobedient conduct not shown to be outside the control of the litigant is all that is required to demonstrate willfulness, bad faith, or fault." *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 948 (9th Cir. 1993).

**B. Defendant's Request that Maredia's Claims Be Dismissed.**

In this matter, Plaintiff has shown consistent and complete disregard for his discovery obligations. He has failed to respond with any substantive discovery, despite having the benefit of numerous extensions and despite several warnings from the court and counsel. Although Maredia is no longer represented by counsel, he was warned that his obligation to respond to discovery continued despite his pro se status. It has been more than two months since the issuance of the order on PM's motion to compel, which required Maredia to provide full and complete

1 answers and responses to PM USA's discovery by April 14, 2006 and  
2 ordered him to pay a \$2,250 monetary sanctions to PM for  
3 noncompliance with his discovery obligations. Maredia still has  
4 yet to produce a single substantive discovery response, has  
5 failed to pay the monetary sanction as orderd, and has failed to  
6 communicate either with counsel for PM or the court. Given this  
7 pattern of conduct, and absent any contrary indication or  
8 communication from Plaintiff, it is appropriate to conclude that  
9 Maredia's failures constitute willful disobedience of this  
10 Court's Order and his discovery obligations.

11 Having found that a plaintiff has wilfully disregarded his  
12 obligations, a court must weigh five factors in determining  
13 whether to impose a terminating sanction:

- 14 (1) the public interest in expeditious resolution of  
15 litigation;
- 16 (2) the court's need to manage its docket;
- 17 (3) prejudice to other parties from the discovery  
18 violations (which includes inquiry into  
19 materiality of the evidence withheld);
- 20 (4) public policy favoring disposition of cases on  
21 their merits ; and
- 22 (5) whether less drastic sanctions are available and  
23 would provide effective deterrence for the  
24 particular violation.

25 *Hyde & Drath v. Baker*, 24 F.3d 1162, 1166-67 (9th Cir. 1994)

26 The outcome usually depends on the third and fifth factors, as  
27 the first two usually favor the issuance of terminating sanctions  
28 for violating a court order, while the fourth usually weghs

1 against such sanctions. *Computer Task Group, Inc. v. Brotby*, 364  
2 F.3d 1112, 1115 (9th Cir. 2004).

3 Here, PM argues that the Maredia's conduct has caused severe  
4 prejudice, essentially paralyzing PM's ability to defend against  
5 Maredia's claims.

6 [The] prejudice caused by Maredia's discovery  
7 violations could not be more egregious. He has failed  
8 to produce a single document or interrogatory answer  
9 supporting the claims made in the complaints that he  
10 filed over a year ago seeking more than \$300,000 in  
11 damages from PM USA. In essence, he has failed to  
12 produce any information upon which he can prosecute his  
13 claims, or that PM USA can analyze to defend Maredia's  
14 claims. As a result of Maredia's continuing failure to  
15 comply with his discovery obligations, PM USA cannot  
16 comply with the deadline of July 14, 2006 to make  
17 expert witness designations and disclosures as set  
18 forth in this Court's Scheduling Conference Order.  
19 Maredia has unilaterally nullified the Scheduling  
20 Conference Order and disrupted this Court's ability to  
21 manage its docket.

22 (Doc. 66 at 8-9.) PM does not overstate the prejudice created by  
23 Maredia's total disregard of his obligations to the Court and to  
24 Defendant.

25 Moreover, no less drastic sanctions will effectively deter  
26 Maredia's conduct. Plaintiff has offered no indication that he  
27 intends to comply with his obligations. Dismissal of his claims  
28 against PM is appropriate under the circumstances.

Defendant's request that Maredia's claims against it be  
dismissed is **GRANTED**.

**C. Defendant's Request to Strike Maredia's Answer and for  
the Entry of Default.**

PM also requests that Maredia's answer to its counterclaims  
be stricken and that default be entered against Maredia on PM's  
counterclaims. This request differs from PM's request for  
dismissal of Maredia's claims in one important respect: the



record does not reflect that Maredia has ever been clearly warned that default judgment might be entered against him. PM's request that Maredia's answer to its counterclaims be stricken and for entry of default against Maredia is **DENIED WITHOUT PREJUDICE**. PM shall file any such motion separately.

**IV. CONCLUSION**

For the reasons set forth above, Defendant's motion for terminating sanctions is **GRANTED IN PART**. Plaintiff's complaint in this case is **DISMISSED** for failure to comply with orders of the court and with his discovery obligations. Defendant's request that Plaintiff's answer to its counterclaims be stricken and that default be entered against Plaintiff on those claims is **DENIED WITHOUT PREJUDICE**.

**SO ORDERED**

Dated: July 17, 2006

/s/ OLIVER W. WANGER

**OLIVER W. WANGER**  
**United States District Judge**